

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL

74-1155

B
P/S.

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Appellee,

-against-

RICHARD CEPULONIS,

Defendant-Appellant.

*On Appeal From The United States
District Court For The Eastern
District Of New York*

APPELLANT'S APPENDIX

JOSEPH J. LOMBARDO
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DOCKET ENTRIES

- 9/20/73 Before WEINSTEIN, J. - Indictment filed
- 9/26/73 Before JUDD, J. - Case called- Deft and counsel present -
Deft arraigned and enters a plea of not guilty-Bail of
\$250,000. cont'd - Case adjd to 11/26/73 for trial.
- 10/1/73 Notice of readiness for trial filed
- 10/4/73 Magistrate's file 73 M 1391 inserted into CR file.
- 10/9/73 Notice of motion filed - for suppression and to dismiss
the indictment, ret. 10/19/73.
- 10/19/73 Before JUDD, J. - Case called - Adjd to 10/25/73
- 10/23/73 Affidavit of KENNETH J. KAPLAN filed.
- 10/23/73 Govts Memorandum of Law filed.
- 10/25/73 Before JUDD J - Case called - deft & counsel J. Lombardo
present - Hearing on motion to suppress ordered and be-
gun - hearing continued to Oct. 26, 1973 at 10:00 am.
- 10/25/73 Before JUDD, J. - Case called - Deft and counsel present-
Case referred to Judge Weinstein for motion to suppress.
- 10/25/73 Before WEINSTEIN J - Case called - deft & counsel Joseph
Lombardo present - Hearing resumed - deft granted steno
minutes in forma pauperis - Hearing concluded - defts
motion to suppress is denied- Jury trial waived - all
parties stipulate that the above record be part of trial-
trial ordered, begun and concluded - court finds the deft
guilty on count 1 - sentence adjd without date - bail

contd.

- 10/29/73 By Schiffman, J - Order apptg counsel filed (in 73 M 1391) (signed by Mag. Schiffman on 9-17-73)
- 11/19/73 By WEINSTEIN J - Order filed that the Warden or Supt. of the Federal House of Detention be directed to permit a marriage ceremony between Mary Tracy and deft Richard Cepulonis. Certified copy to Warden, at Federal House of Detention, NYC.
- 11/21/73 Two letters from J. Lombardo, esq. dated 11-12-73 and 11-16-73 filed and Affidavit of Richard Cepulonis filed Re: marriage of deft to M. Tracy.
- 11/27/73 Letter from deft filed received from Chambers.
- 11/27/73 Letter dated 11-23-73 from Frank Lovell and reply of Pro Se Clerk filed RE: request for documents
- 11/27/73 Letter date 11-20-73 from deft and reply of Judge Weinstein filed re: request for consideration at time of sentencing.
- 11/28/73 Letter from deft filed moving the court for return of an automobile seized, etc. (forwarded to J. Weinstein)
- 12/26/73 Letter dated 12/18/73 filed from K. Kaplan to J. Weinstein
- 12/26/73 By WEINSTEIN J. - Order undated filed that the Clerk will send a copy of K. Kaplan's letter to deft and counsel.
- 2/1/74 Notice of motion for return of seized property and application for leave to proceed in forma pauperis filed (Forwarded to Judge Weinstein)

2/1/74 Before WEINSTEIN, J. - Case called - Deft and counsel present - Deft sentenced to imprisonment for a period of 5 years on count 1 - Clerk to file notice of appeal in forma pauperis (note that at this time count 2 remains open)

2/1/74 Judgment and Commitment filed - certified copies to Marshal

2/1/74 Notice of appeal filed

2/1/74 Docket entries and duplicate of notice of appeal mailed to C of A

2/2/74 By WEINSTEIN J - Order filed (see notation on page 2 of motion) Govt shall respond promptly (for return of seized property etc) The Clerk will send a copy of this Order to deft. his counsel and counsel for the Govt.

2/6/74 Certified copy of Judgement & Commitment ret'd and filed - deft delivered to Federal Det. Headquarters.

2/13/74 Letter dated Feb. 2, 1974 filed from deft and reply from Judge Weinstein dated 2-8-74 to E.J. Boyd, Acting U.S. Atty.

2/13/74 Answering affidavit filed on motion for return of seized property (by Asst US Atty Kenneth Kaplan)

2/14/74 By WEINSTEIN J - Order filed - Based on the affidavit and information in possession of the court through prior proceedings in this case, the motion is denied. Clerk to inform the deft & all counsel (Parties notified)

2/15/74 Order received from Court of Appeals and filed that record

be docketed on or before 2-21-74

- 2/19/74 Letter dated 2-13-74 filed from Asst Kaplan received from Chambers with Parole Report attached. (endorsed on bottom as having no recommendation and signed by Judge Weinstein) copy forwarded to Asst. Kaplan. Parole Report ret'd to Chambers.
- 2/20/74 Defts Memorandum of Law filed.
- 2/21/74 Acknowledgement received from Court of Appeals and filed for receipt of file.
- 2/28/74 Letter from Robert Harrington, Esq. dated 2/25/74 to Clerk's Office filed re: request for transcripts (forwarded to Judge Weinstein)
- 3/26/74 Stenographers transcript filed dated Oct. 25, 1973.
- 4/1/74 Voucher for Expert Services filed.
- 4/5/74 Stenographers transcript filed dated 2-1-74.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA

73 CR 859

-against-

RICHARD CEPULONIS,

Defendant.

INDICTMENT
(T.18,U.S.C. §922(g) and
T.26,US.C. §5861 (d)

SEP 20 1973

JUDD, J.

-----X
THE GRAND JURY CHARGES:

COUNT I

On or about the 16th day of September, 1973, within the Eastern District of New York, the defendant RICHARD CEPULONIS, knowingly and unlawfully possessed a firearm, to wit: an M-16 A1 automatic rifle, caliber 5.56, serial number 2024903, which firearm was not registered to him in the National Firearm Registration and Transfer Record as required by Chapter 53, Title 26, United States Code. (Title 26, United States Code, Section 5861(d).

COUNT II

On or about the 16th day of September, 1973, within the Eastern District of New York, the defendant RICHARD CEPULONIS, having been convicted on November 9, 1972 at Worcester Superior Court, Worcester, Massachusetts, of armed robbery, a crime punishable by imprisonment for a term exceeding one year, did knowingly ship and transport a firearm, that is a Marlin model 336A rifle, caliber .35 Remington, serial number H20304, in interstate commerce

from Cleveland, Ohio to Queens, New York. (T. 18, United States Code, Section 922 (g)).

A TRUE BILL.

Foreman.

UNITED STATES ATTORNEY

OPINION OF COURT BELOW

....."So, I make no finding, therefore, on the issue of consent to search. I must say, I don't believe the defendant at all, and the witness, Miss Tracy, was obviously so upset, she obviously didn't know what was going on.

There's a serious question about whether the defendant gave his consent to enter the room voluntarily. I don't see that it has any bearing on this case.

Motion to suppress is denied.

Is there any other evidence you want to submit at this time in connection with Count 1?"

"THE COURT: I find that the defendant was in possession of a firearm indirectly in that he owned the car in which the firearm was located. He had parked the car at that place and he had complete control over it. He knew the guns were in the car. So he was in knowing and unlawful possession of the firearm. Firearms were an M-16, an automatic rifle. The rifle was not registered to

him under the National Firearms Registration & Transfer record.

Therefore, the defendant is guilty beyond a reasonable doubt of Count 1 of the indictment. I don't see how there's any question about it.

The trial, however, on stipulation, will permit you to take an appeal on the suppression at issue. Are there any other findings of fact you wish me to make?" (see Trial Minutes pp 67, 68, 69)

STATE OF NEW YORK)
: SS:
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 15 day of April, 1974 deponent served the within *Appendix* upon *U.S. Atty. Eastern Dist of N.Y.*

attorney(s) for *Appellee*

in this action, at *225 Cadman Plaza East*
Brooklyn, N.Y.

the address designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

Robert Bailey
ROBERT BAILEY

Sworn to before me, this

15 day of *April*, 1974

William Bailey
WILLIAM BAILEY

Notary Public, State of New York

No. 43-0132945

Qualified in Richmond County

Commission Expires March 30, 1976